

1 opinion the character of the area that's served
2 by Old Kirk Road, especially as it relates to the
3 business part and the business industrial area
4 north of the tracks is clearly suburban in nature
5 and not rural.

6 Q. You mentioned that construction is planned
7 for the intersection of Old Kirk Road and
8 Route 38.

9 A. That's what I have been told by the Kane
10 County Engineering Department.

11 Q. Do you know when that's to take place?

12 A. They have told me that they -- that the
13 earliest they could expect design approval would
14 be in September of this year, and depending on
15 right-of-way acquisition needs, depending on
16 their funding availability, it could be another
17 two years before the intersection improvement
18 would be either under construction or complete.

19 MR. BERRY: That's all the questions I have.

20 JUDGE TATE: Mr. Harpring.
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22

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1 A. Yes.

2 As I think I might have alluded to, to
3 extend Reed Road would require the demolition of
4 at least one building in this industrial area.

5 It would require, as I understand it,
6 the purchase of property from the existing
7 business and I don't recall the name of that
8 business just east of Glengarry and south of
9 Route 38.

10 There's also the question of crossing a
11 railroad spur that serves that business. I'm not
12 sure how active that is.

13 In my conversation with Geneva Public
14 Works Department, I came away with the
15 impression, and that's strictly my interpretation
16 of their comments, that this alternative route
17 has been discussed in the past.

18 It is not a very viable or realistic
19 alternative to consider.

20 Q. So at present as we sit here today, with
21 the Union Pacific petitioning to close the
22 crossing, would it be accurate to say the only

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1 CROSS-EXAMINATION

2 BY

3 MR. HARPRING:

4 Q. Based on your observations do you believe
5 the traffic counts agree with earlier studies?

6 A. I believe I testified earlier that my
7 sample observations would appear to be pretty
8 consistent with the 1990 (sic) traffic counts
9 that were performed by or on behalf of the UP
10 Railroad.

11 MR. HARPRING: Thank you.

12 JUDGE TATE: Redirect?

13 REDIRECT EXAMINATION

14 BY

15 MS. DICKSON:

16 Q. There was some questioning, Mr. Coulter,
17 about the possibility of allowing another access
18 point for these property -- the industrial
19 properties to be having Reed Road connected to
20 Glengarry, and you testified that it would be
21 neither practical, reasonable, nor feasible.

22 Can you expand on that answer?

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1 realistic ingress/egress point for the businesses
2 to the north is Roosevelt Road?

3 A. At this particular point in time, and I
4 would say probably for at least the next several
5 years, it would be.

6 Certainly right now for at least the
7 next several years we're probably talking about
8 Old Kirk Road at Route 38 would be the only point
9 of ingress and egress should the crossing be
10 closed at Old Kirk Road.

11 MS. DICKSON: I have no other questions.

12 JUDGE TATE: Are there any other questions of
13 Mr. Coulter?

14 Thank you very much, Mr. Coulter.

15 MS. DICKSON: At this point, your Honor, I
16 have no other witnesses and I would renew my
17 request that Exhibits No. -- Respondent's
18 Exhibits No. 1 through I think 16 at this point
19 be admitted into evidence.

20 JUDGE TATE: Any objection?

21 MR. SHUMATE: I don't object to any of the
22 evidence being admitted, but I would put on the

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1 record that the petition that has been presented
2 may not follow the format that's required by the
3 State of Illinois and certainly by it's -- the
4 documentation as it shows itself does not
5 include -- is not limited to those people that
6 live in the jurisdiction of the respondent.

7 JUDGE TATE: Thank you.

8 Respondent's Exhibits 1 through 16 are
9 admitted into evidence.

10 (Whereupon, Respondent's
11 Exhibits 1 through 16 were
12 admitted into evidence.)

13 JUDGE TATE: Is there anything else for the
14 record?

15 MR. SHUMATE: Yes, your Honor. It's very
16 short. I have Rick Sturm here. As you know
17 Jerry Linneman has retired and there have been --
18 only been about, oh, two or three developments
19 since we had our first hearing which was in 1991
20 on this case. It's -- it was September 24, 2001.
21 That's what I meant to say. If I said 1991, I
22 apologize.

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1 township were in negotiations to work toward a
2 stipulation, a stipulation which we believe was
3 agreed to until it was then presented before some
4 of the constituents that were represented by the
5 Township Commissioner.

6 And, in addition, we have received a
7 letter from the DuPage Railroad Safety Council
8 which is the county that's literally adjacent to
9 this property indicating their support for the
10 closure of the crossing, and I would like to have
11 those -- that -- the discussion about how we did
12 cooperate with the township, and I think the
13 record should show that what we proposed with
14 regard to the closing and the remuneration and
15 the work that we would do, and I think the record
16 would need that to show clearly our good faith to
17 work with the township to work out an amiable
18 closure of this crossing.

19 JUDGE TATE: Mr. Sturm testified two weeks
20 ago, did he not?

21 MS. DICKSON: Yes, your Honor.

22 MR. SHUMATE: Yes, your Honor.

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1 MS. DICKSON: We haven't been at it that long.

2 MR. SHUMATE: September 24, 2001, and I'd like
3 to call Mr. Rick Sturm, if I could.

4 JUDGE TATE: As a rebuttal witness or what?

5 MR. SHUMATE: Well, we have been in -- well, I
6 could -- yes, I'll call it rebuttal witness.
7 That will be fine.

8 MS. DICKSON: Your Honor, we'd object to Union
9 Pacific calling any witnesses at this point, and
10 September 21st, and that is the time in which
11 we're looking at this petition for railroad
12 crossing closure.

13 Union Pacific had the full and fair
14 opportunity to present any and all evidence that
15 it had in support of its petition.

16 At this point there would be no further
17 evidence that they should be able to provide
18 based on the rules that we -- we're governed by
19 when we entered into this hearing.

20 MR. SHUMATE: I disagree with that, your
21 Honor, in that there were many times that this
22 case was continued because the railroad and the

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1 JUDGE TATE: No, I think that any further
2 additions to the record will be in the form of
3 short briefs.

4 MR. SHUMATE: Okay. Thank you, your Honor.

5 MS. DICKSON: Thank you, your Honor.

6 JUDGE TATE: You're welcome.

7 And those will be due -- how long do you
8 need?

9 MR. SHUMATE: It will just be in the form of a
10 letter with a couple attachments, your Honor. I
11 don't need much time at all.

12 JUDGE TATE: Nothing too long.

13 MR. SHUMATE: No.

14 JUDGE TATE: Keep it, let's say, five to ten
15 pages at most.

16 MS. DICKSON: Your Honor, as I've never
17 been -- Mr. Shumate has had more experience than
18 I, are you -- is it my understanding you're
19 looking to this in the form of a closing argument
20 or statement of what the evidence provided and
21 what the result --

22 JUDGE TATE: What you usually put in a brief,

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1 your arguments, your summation of your case, your
2 arguments, and everything.
3 MS. DICKSON: Okay.
4 JUDGE TATE: Yes.
5 MR. BERRY: When are these due?
6 JUDGE TATE: We haven't decided yet.
7 MR. BERRY: Okay, I'm sorry.
8 JUDGE TATE: Okay. Coming up.
9 MS. DICKSON: For that purpose, your Honor, I
10 would appreciate the opportunity to have both of
11 the transcripts of the last of this hearing and
12 the previous hearing so we have to have I think
13 that --
14 JUDGE TATE: About two weeks.
15 MS. DICKSON: Two weeks at a minimum for that,
16 so if we could have two weeks after that, so four
17 weeks out.
18 JUDGE TATE: Let's see. Four weeks would be
19 one, two -- June 11. I think a little longer
20 than that.
21 MS. DICKSON: Okay.
22 JUDGE TATE: Let's say June 24th.

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1 JUDGE TATE: Oh, boy.
2 Responses July 8th. Briefs due June
3 24th, responses July 8th.
4 Having heard the testimony and having
5 the evidence before me, I direct that the record
6 be marked heard and taken.
7 HEARD AND TAKEN
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1 Simultaneous briefs.
2 MS. DICKSON: Do we submit --
3 JUDGE TATE: Is that satisfactory?
4 MS. DICKSON: Do we submit those directly to
5 you at this address.
6 JUDGE TATE: They're filed in Springfield, the
7 same as other pleadings.
8 MS. DICKSON: Thank you, your Honor.
9 MR. BERRY: Your Honor.
10 JUDGE TATE: Yes, sir.
11 MR. BERRY: May I have a chance to respond
12 after their briefs are submitted?
13 MR. SHUMATE: I have no objection.
14 JUDGE TATE: Huh?
15 MR. SHUMATE: I have no objection.
16 JUDGE TATE: All right. Responses.
17 MR. BERRY: Two weeks is plenty of time.
18 JUDGE TATE: Okay. What's two weeks from
19 6/24?
20 MS. DICKSON: July 8.
21 MR. SHUMATE: July 8.
22 MR. BERRY: Oh, my birthday, good.

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SHEET 1

1 BEFORE THE
2 ILLINOIS COMMERCE COMMISSION
3 IN THE MATTER OF:)
4 UNION PACIFIC RAILROAD COMPANY,)
5 vs.) No. T01-0040
6 TOWNSHIP OF GENEVA, STATE OF)
7 ILLINOIS and ILLINOIS DEPARTMENT)
8 OF TRANSPORTATION)
9 Petition for an order of the)
10 Illinois Commerce Commission for)
11 the closure of Old Kirk Road,)
12 public grade crossing)
13 DOT #174 986H at Milepost 33.75)
14 on the Geneva Subdivision, City)
15 of Geneva, Geneva Township, Kane)
16 County, Illinois)
17 Chicago, Illinois
18 January 28, 2004
19 Met pursuant to notice at 9:00 a.m.
20 BEFORE:
21 MS. JUNE B. TATE, Administrative Law Judge.
22 APPEARANCES:
MR. MACK H. SHUMATE, JR.
101 North Wacker Drive, Suite 1920
Chicago, Illinois 60606
Appearing for Respondent;
BOND DICKSON & ASSOCIATES, by
MS. MARY DICKSON
203 East Liberty Drive
Wheaton, Illinois 60187,
Appearing for the Applicant;

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1 I N D E X
2 Witnesses: Direct Cross direct Re- By
3 Thomas Andryuk 306 326 349 355 363
4 Rick Sturm 365 381
5 Dick Untch 384 400
6
7 E X H I B I T S
8 Number For Identification In Evidence
9 Petitioner's
10 No. 3 294 405
11 Petitioner's
12 No. 4 294 405
13 Petitioner's
14 No. 5 294
15 Petitioner's
16 No. 6 294
17 Petitioner's
18 No. 7 294
19 City's
20 No. 1 337 405
21
22

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1 MR. ROBERT BERRY
2 527 East Capitol Avenue
3 Springfield, Illinois 62701
4 Appearing for Staff
5 (via satellite)
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21 SULLIVAN REPORTING COMPANY, by
22 Tracy L. Ross, CSR

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1 (Whereupon, Petitioner's
2 Exhibit Nos. 3-7 were
3 marked for identification
4 as of this date.)
5 JUDGE TATE: In accordance with the rules and
6 regulations of the Illinois Commerce Commission,
7 I now call Docket T01-0040, Union Pacific
8 Railroad Company versus Township of Geneva, State
9 of Illinois and Illinois Department of
10 Transportation, petition for an order of the
11 Illinois Commerce Commission for the closure of
12 Old Kirk Road, public grade crossing DOT
13 No. 174 986H at Milepost 33.75 on the Geneva
14 Subdivision, City of Geneva, Geneva Township,
15 Kane County, Illinois.
16 Your appearances, please.
17 MR. SHUMATE: My name is Mack Shumate,
18 S-h-u-m-a-t-e, I'm an attorney with the Union
19 Pacific Railroad Company, 101 North Wacker Drive,
20 Suite 1920, Chicago, Illinois 60606, and I'll
21 have a brief opening statement.
22 MS. DICKSON: Mary Dickson, D-i-c-k-s-o-n,

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1 with Bond, B-o-n-d, Dickson, D-i-c-k-s-o-n &
 2 Associates, 203 East Liberty Drive in Wheaton,
 3 Illinois 60187, appearing on behalf of the Geneva
 4 Township Highway Commissioner, Mr. John Carlson,
 5 who is also present this morning.

6 JUDGE TATE: Springfield?

7 MR. BERRY: Bob Berry representing the Staff
 8 Transportation Division Railroad Section of the
 9 Commission. Business address, 527 East Capitol
 10 Avenue, Springfield, Illinois 62701.

11 JUDGE TATE: Do have you have witnesses who
 12 have not previously been sworn?

13 JUDGE TATE: Yes. I have Tom Andryuk and then
 14 we have a fact witness his name is Dick Untch,
 15 he's with the City of Geneva.

16 JUDGE TATE: Well, have them stand to be
 17 sworn.

18 Raise your right hands
 19 (Witnesses sworn.)

20 JUDGE TATE: Mr. Shumate, you have an opening
 21 statement?

22 MR. SHUMATE: Yes, your Honor. We're before
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1 them that they should attend the hearing or file
 2 an appearance if they so desired.

3 Certainly, the newspaper notice of this
 4 hearing appeared in the City of Geneva.

5 That's the opening statement.

6 JUDGE TATE: Have you any?

7 MS. DICKSON: Yes, if I may, Judge Tate.

8 Upon receipt of the order of the ICC
 9 granting rehearing, I was left to ponder what, in
 10 fact, we were going to be rehearing in that the
 11 UP stated in their petition for rehearing and
 12 request for rehearing that the request for
 13 rehearing was not being sought for the purposes
 14 of alleging new facts, they state that on Page 10
 15 of their application for rehearing.

16 Rather, their request for rehearing is
 17 predicated solely on the allegation that the
 18 prior order of your Honor and the prior order
 19 issued by the ICC was clearly contrary to the
 20 manifest weight of the evidence, in that the
 21 application for rehearing was not based on or
 22 predicated on a request to present any new
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1 the Illinois Commerce Commission here again today
 2 on a motion for rehearing which was granted and
 3 that I would like the record to reflect that all
 4 of the evidence and testimony that has been given
 5 in this matter will remain as part of the record
 6 and that we are supplementing the record with the
 7 testimony today.

8 And that we learned yesterday for the
 9 very first time that the crossing which is the
 10 subject of today's petition, which is at Old Kirk
 11 Road, the right-of-way of the railroad bounded by
 12 the right-of-way lines of the railroad, at the
 13 location of the crossing is technically in the
 14 City of Geneva and the entire right-of-way, as a
 15 matter of fact, is in the City of Geneva.

16 The land to the north and the land to
 17 the south which makes up Old Kirk Road is in the
 18 Township. I don't believe this makes any
 19 difference vis-a-vis the Township's interest --
 20 Geneva Township's interest, however it does show
 21 that the City of Geneva has an interest. And I
 22 invited them yesterday when we had a meeting with
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1 evidence, we would object on behalf of the Geneva
 2 Township Highway Commissioner to the tender of
 3 new evidence at hearing.

4 Rather, our argument would be that if
 5 there was some evidence that your Honor did not
 6 properly apply the proper weight to that we
 7 would -- we would ask that your Honor just review
 8 the evidence previously tendered to this
 9 proceeding and determine again, in review of that
 10 evidence, whether the order should be sustained
 11 that was previously issued.

12 (Phone Interruption.)

13 JUDGE TATE: Mr. Shumate?

14 MR. SHUMATE: I take the opening statement is
 15 in the form of a motion.

16 From the perspective of the Railroad,
 17 it's our recollection at the close of testimony
 18 in the original proceeding I had tried to put
 19 Rick Sturm on to produce additional evidence in
 20 this case. And we were instructed by the Court
 21 that any additional evidence would be in the form
 22 of written testimony and that's what we had
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1 attempted to do was provide that documentation in
2 the form of written testimony. Objections were
3 made to that in writing by the Township.

4 However, the Railroad believed then and
5 it still believes that this is definitely
6 relevant to the subject matter of closing this
7 crossing. And rather than ending this particular
8 proceeding with the record that has already been
9 produced, I believe that the information is
10 relevant, especially in light of the fact that it
11 is a fact that the City of Geneva is -- would be
12 a proper party -- a proper party, not the only,
13 but a proper party in the case in that the
14 crossing itself is in the City of Geneva.

15 And that, I believe the record should be
16 supplemented with the additional facts that have
17 come to light after the original hearing was
18 marked heard and taken.

19 MS. DICKSON: May I make a short response?

20 JUDGE TATE: Yes, you may.

21 MS. DICKSON: Again, that is not what the
22 petition for rehearing asks for. It does not ask

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1 City of Geneva, this petition has been on file
2 now for almost -- well, more than three years and
3 to discover just now that this railway
4 right-of-way may have some -- the City of Geneva
5 may have some evidence or some interest in this
6 proceeding when the matter has been pending, and
7 I believe the City of Geneva has had knowledge
8 that the proceedings have been pending since
9 2001. It doesn't appear to me, at least, to be a
10 proper basis to allow new evidence to come before
11 this proceeding at this time.

12 MR. SHUMATE: If I may reply to that, your
13 Honor.

14 Attached to our request for rehearing
15 and the documentation that was filed at the close
16 of evidence when we briefed this matter was
17 additional evidence which we were led to believe
18 at the close of the hearing we were allowed to
19 put in, which the Township in its replies to the
20 brief stated that we were not permitted to do
21 that.

22 And it was our clear understanding at

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1 to supplement the record in any way with any new
2 evidence and it was not a claim of new evidence
3 that the ICC issued its order allowing rehearing
4 to be granted.

5 Further, Mr. Shumate indicates now what
6 he wants to do is just add to the record those --
7 that information or evidence from Mr. Sturm that
8 your Honor would not allow to be supplemented at
9 the last hearing and yet this morning he
10 indicates that his two witnesses will be Dick
11 Untch from the City of Geneva and Tom Andryuk
12 from the UP.

13 Neither of these witnesses were
14 witnesses brought to the attention of your Honor
15 at the previous hearing nor were they witnesses
16 that were added within the UP's request for
17 rehearing. Rather, if Mr. Shumate believes that
18 Mr. Sturm should testify, again, that would be
19 over our objection and over the clear ruling of
20 the Court at the last hearing.

21 As to the UP's new found knowledge that
22 this crossing may be within the purview of the

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1 the close of the last hearing on this case that
2 any additional information would be submitted in
3 writing to be placed on the record. So we did
4 supplement the record after the close of the
5 testimony, we did produce additional
6 information -- fact information relevant to this
7 case and that is -- I think it's a
8 mischaracterization to say that the only reason
9 for our request for a rehearing was -- excuse me,
10 that a reason for the request for rehearing --
11 strike that.

12 That we would not want to put additional
13 information in. We did try to put additional
14 information in at the close of the hearing
15 because Rick Sturm was not allowed to continue
16 with verbal testimony and we were told that any
17 additional information should be submitted to
18 this hearing body in the form of writing and
19 additional facts were attached to the filings we
20 made.

21 And we would like to supplement those
22 facts, additionally, as more and more information

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1 has come to light with regard to this crossing.
2 I believe that information should definitely be
3 brought to the attention of the Illinois Commerce
4 Commission.

5 With regard to the information that
6 existed and that the Township knew existed
7 literally two years ago and was not brought
8 before either the Railroad or brought before this
9 Court.

10 MS. DICKSON: Well, Judge, I just refer again
11 to Page 10 of the application for rehearing. The
12 UP states that the -- it states, The failure to
13 order the closure of the Old Kirk Road at-grade
14 crossing in light of the facts and testimony so
15 ably summarized by the Staff of the ICC is -- and
16 they put it in bold lettering -- clearly contrary
17 to the manifest weight of the evidence that has
18 been presented in this matter. There are no new
19 facts alleged in this application for a
20 rehearing.

21 Pursuant to the Illinois Administrative
22 Code, the rules for post-hearing procedure

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1 MR. SHUMATE: That is incorrect.

2 JUDGE TATE: All right. For purposes of
3 progress, I'll overrule the objection. I have a
4 question in regard to City of Geneva. Did you
5 have some particular remediation for not having
6 the City of Geneva here?

7 MR. SHUMATE: The City of Geneva is here
8 today, your Honor. And as I indicated earlier,
9 we were unaware that the City of Geneva had
10 annexed into the City of Geneva the Railroad's
11 right-of-way which is located at Old Kirk Road
12 and our tracks.

13 JUDGE TATE: Very well. You may call your
14 first witness.

15 MR. SHUMATE: I'd like to call Tom Andryuk,
16 please.

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1 provide that applications for rehearing must
2 state with specificity the issues for which
3 rehearing is sought. If an application for
4 rehearing alleges new facts, then the application
5 must be filed with the verification. There is no
6 verification filed with the application for
7 rehearing because Mr. Shumate stated that there
8 was no new -- there were no new facts that would
9 be presented.

10 MR. SHUMATE: I didn't say there was no new
11 facts. I said there were enough facts on the
12 record to support Mr. Barry's and our position in
13 this case. We are here to --

14 MS. DICKSON: He states that --

15 MR. SHUMATE: -- we asked for a rehearing,
16 we've been granted a rehearing and a rehearing to
17 me would mean that we would be able to supplement
18 the record with the additional facts that have
19 come to light.

20 MS. DICKSON: We object to that because it is
21 not in compliance with the rules of post-hearing
22 procedure.

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1 aTHOMAS ANDRYUKá,
2 called as a witness herein, having been
3 previously duly sworn, was examined and testified
4 as follows:

5 DIRECT EXAMINATION

6 BY

7 MR. SHUMATE:

8 Q. Would you state your name for the record,
9 please.

10 A. Thomas Andryuk, A-n-d-r-y-u-k.

11 Q. By whom are you currently employed?

12 A. The Union Pacific Railroad.

13 Q. What is your position at the Union Pacific
14 Railroad?

15 A. Manager of field engineering.

16 Q. What is your general work experience in
17 the railroad industry?

18 A. I've been employed by the Railroad for the
19 last 24 years in a variety of capacities from
20 surveyor, chemist, claims agent, budget manager,
21 planning engineer and now the public works end
22 and various other --

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1 Q. And what is your current job title?
 2 A. Manager of field engineering.
 3 Q. So you were in the engineering department
 4 at the Union Pacific Railroad?
 5 A. That is correct.
 6 Q. Does the territory for which you are
 7 responsible include the location of both Kirk
 8 Road and Old Kirk Road, which is the subject of
 9 today's hearing?
 10 A. Yes, it does.
 11 Q. What are your current duties and
 12 responsibilities?
 13 A. I'm primarily responsible for projects
 14 that the Railroad is involved with or involved in
 15 of a public nature, so anything that is presented
 16 in public works.
 17 Q. Any crossing closure or modification of a
 18 closed -- a crossing would be a public works
 19 project?
 20 A. Yes, sir.
 21 Q. Have you had an opportunity to visit the
 22 site which is the subject of today's hearing?

307

1 Q. Approximately how long is that video?
 2 A. Ten minutes.
 3 Q. Do you have it with you today?
 4 A. Yes, I do.
 5 MR. SHUMATE: Your Honor, we would like to
 6 show this video that Mr. Andryuk made. He can
 7 narrate for the Court and also for the Illinois
 8 Commerce Commission. It shows the area that
 9 we've talked about for several years now and we
 10 haven't had much in the way of prints, but it
 11 does show what the area looks like. We'd like to
 12 show that if we could.
 13 JUDGE TATE: Proceed.
 14 (A videotape was played.)
 15 THE COURT: Is there speech on the video?
 16 THE WITNESS: Yes there is, Judge.
 17 MR. SHUMATE: There is. We can take it off
 18 and he could narrate it, if you'd like it that
 19 way.
 20 JUDGE TATE: The court reporter can't take
 21 down both.
 22 MR. SHUMATE: Well, then what we should do is

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1 A. Yes, I have.
 2 Q. And when was the last time you visited
 3 that site?
 4 A. I drove over the grade separation
 5 yesterday. I did a more thorough -- on-site
 6 review was done approximately two weeks ago.
 7 Q. Did you make a record of your last visit
 8 to the site and the surrounding area?
 9 A. Yes, I did.
 10 Q. Did you have a self-guided tour? How did
 11 you record it?
 12 A. The last review was a walking review
 13 wheeling off the distances of the various lengths
 14 of the intersections and the adverse distance if
 15 the Old Kirk Crossing was closed, so using a
 16 wheeled calibration device.
 17 Q. And this record or tour of the area, how
 18 did you make -- did you make a recording of it?
 19 A. The visit prior to that, we made a video
 20 recording of it.
 21 Q. And did you make that video recording?
 22 A. Yes, I did.

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1 turn the voice off on that and he can dictate
 2 what he sees and we'll submit everything offered
 3 into evidence.
 4 THE WITNESS: This is about 25 feet south and
 5 this is 25 feet south of the crossing. The car
 6 going by is Roosevelt Road. And then just
 7 taking, basically, a 365-degree pan clock-wise.
 8 Q. What direction is that?
 9 A. This would be facing east, now southeast,
 10 just giving a general lay of the land. This is
 11 south on Old Kirk Road and there is a grade
 12 separation at Kirk Road to the west about 6 or
 13 700 feet down the track. And there are the
 14 industries --
 15 Q. Speak up louder.
 16 A. Those are the industrial development that
 17 are in the northwest quadrant of the crossing
 18 area and then back to the other perspective.
 19 This next sequence -- driving north on
 20 Roosevelt Road, the traffic lights ahead are on
 21 the Kirk Road intersection and Roosevelt Road and
 22 now we'll be turning onto Old Kirk Road headed

310

1 south. Again, just giving a general feel for the
2 area.

3 This first intersection is Reed Street,
4 which we will take a little review of in another
5 sequence.

6 Q. You're now south of the crossing; is that
7 correct?

8 A. That is correct.

9 Q. This is the residential area?

10 A. Yes. This is primarily residential. I
11 believe the previous testimony stated there are
12 about 28 houses and a church and a preschool, I
13 believe. And I didn't see any new construction
14 or anything going on there.

15 This first intersection is Cherry Lane
16 which accesses onto Kirk Road. There is a
17 traffic signal at the intersection of Cherry Lane
18 and Kirk Road.

19 Past Cherry Lane traveling south, this
20 is about another two-tenths of a mile, the church
21 is off to the left side here (indicating) and Old
22 Kirk Road just makes a bend around and intersects

311

1 JUDGE TATE: This is the Kirk Road overpass?

2 THE WITNESS: That is correct, your Honor.

3 BY MR. SHUMATE:

4 Q. And this is the intersection at what?

5 A. At Roosevelt Road and Kirk Road, or Route
6 38.

7 Q. And this is also referred to as State
8 Street; is it not?

9 A. Yes. I believe on the west side as it
10 approaches the City of Geneva it has -- becomes
11 State Street.

12 And now we're headed westbound on
13 Roosevelt Road.

14 Q. Is it eastbound or --

15 A. Eastbound, I'm sorry, eastbound. And this
16 is about, again, 6 or 700 feet back to the
17 intersection of Roosevelt Road and Old Kirk Road.

18 Q. So we've made a complete loop?

19 A. That is correct. This is Reed Street,
20 which is that initial intersection just north of
21 the grade crossing and we just took a little trip
22 down there. This is where there is a couple of

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1 with Kirk Road and this intersection is regulated
2 by a stop sign.

3 JUDGE TATE: Now, what is that crossing road
4 there, at this T intersection?

5 THE WITNESS: This is Kirk Road. Kirk Road
6 and Old Kirk Road. So now we're headed north on
7 Kirk Road. And this was -- I was trying to get a
8 shot over at the Kane County Events Center where
9 the Kane County Cougars play. And this is,
10 again, the traffic signal at Cherry Lane and you
11 can just see the Kane County Stadium off there at
12 the distance, the light towers.

13 BY MR. SHUMATE:

14 Q. So this is Cherry Lane now?

15 A. This is Cherry Lane. And just a shot down
16 the street from the other -- looking from Kirk
17 Road down to Old Kirk Road.

18 Now we're on the grade separation itself
19 and looking over to the east as we are
20 approaching the area where it crosses the Union
21 Pacific Railroad tracks, and you can just see the
22 Old Kirk Road Crossing there in the distance.

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1 industries and I believe the welding supply
2 industry and we just wanted to show the Court
3 what was down this -- what it looked like in this
4 general area.

5 Q. And this is the welding supply industry
6 that filed some documents in this case --

7 A. Yes.

8 Q. -- with regard to access?

9 A. Yes. It is not this industry right here
10 (indicating). This is a dirt and gravel road as
11 you can see and this is another welding outfit
12 here (indicating). I don't know what that
13 industry is. And then the road continues on
14 underneath the grade separation and then it
15 dead-ends at this welding supply company.

16 Q. Is that it, then?

17 A. No, there's -- on last sequence here, this
18 is standing on Cherry Lane on the west side,
19 that's -- those light towers are the Kane County
20 Cougars Stadium. And now we're looking north,
21 just panning around and this is the intersection
22 of Cherry Lane and Kirk Road. We're standing on

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1 the west side and that's looking eastward down
 2 Cherry Lane where -- there's a lot of traffic as
 3 it exits. The stadium events have been going
 4 down there and using Old Kirk Road as an access
 5 to the -- to Roosevelt Road.
 6 Q. Now, you referenced in that video two
 7 welding facilities. The one welding facility had
 8 indicated that they wanted to preserve access --
 9 Mr. Andryuk, on the video, you said at the end of
 10 Reed Road there was a welding supply outfit
 11 industry?
 12 A. Yes, that's correct.
 13 Q. And is that the welding supply company
 14 that had indicated that it had trucks that had
 15 used Roosevelt Road both east and west in order
 16 to --
 17 MR. BERRY: Excuse me. I can't hear any
 18 sound.
 19 JUDGE TATE: Oh, I'm sorry. Now can you hear
 20 us?
 21 MR. BERRY: I can.
 22 MR. SHUMATE: Can you hear me now?

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1 yesterday, it is my understanding that that is
 2 not a dedicated road.
 3 Q. Currently it appears to be a private road;
 4 is that correct?
 5 A. That is correct.
 6 Q. So there -- it would be in the nature of a
 7 driveway that would allow them access to Old Kirk
 8 Road; is that correct?
 9 A. That is correct.
 10 Q. And, now, when you were on that -- I'll
 11 call it "Reed Road," you did go underneath the
 12 Kirk Road overpass; is that correct?
 13 A. Yes.
 14 Q. Do you know approximately what that
 15 clearance is there?
 16 A. I would have to guess.
 17 Q. Don't guess, then. It was -- it was
 18 adequate for your truck?
 19 A. More than adequate. We were driving a
 20 three-quarter ton pickup and there was ample
 21 clearance for that size truck as well as larger
 22 vehicles.

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1 MR. BERRY: That's fine.
 2 MR. SHUMATE: I'll redo the question.
 3 BY MR. SHUMATE:
 4 Q. Mr. Andryuk, on the video after you went
 5 on Reed Road and you went underneath Kirk Road,
 6 underneath the bridge there was a welding supply
 7 industry; is that correct?
 8 A. That is correct.
 9 Q. Is that one of the welding supply
 10 companies that indicated it desired to maintain
 11 access to Roosevelt Road both in an east and
 12 westerly direction?
 13 A. That is my understanding, yes.
 14 Q. And currently, can they make left- and
 15 right-hand turns at the intersection of Old Kirk
 16 Road and Roosevelt Road?
 17 A. Yes, they can.
 18 Q. Now, on your video, you traveled on a road
 19 that was referred to as Reed Road. To your
 20 knowledge, do you know whether or not that is a
 21 dedicated road?
 22 A. As of information that we received

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1 Q. And for the -- did you observe any
 2 tractor-trailers on the west side of that --
 3 A. I did. If you noticed in the video there
 4 was a trailer parked behind the welding supply
 5 facility.
 6 Q. So the height of the bridge would
 7 accommodate a tractor-trailer at the time?
 8 A. That's the only access.
 9 Q. On Reed Road?
 10 A. That's correct.
 11 Q. Are you aware of any plans to extend Reed
 12 Road further to the west and to the north to
 13 intersect with Route 38?
 14 MS. DICKSON: Objection. Relevance.
 15 MR. SHUMATE: How is that relevant? The
 16 problem that the industry has is they say they
 17 can't to get to Roosevelt Road if there's a
 18 modification made to that intersection and I'm
 19 asking whether there are other -- any plans that
 20 he's aware of to have an alternative exit, right
 21 of ingress and egress, if you will, on Roosevelt
 22 Road.

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1 JUDGE TATE: Overruled.
 2 MS. DICKSON: Judge, if we might, we also
 3 enter an objection to this evidence and to the
 4 video which Mr. Shumate has not yet sought to
 5 introduce, but as being new evidence, obviously
 6 just garnered within the last month or so given
 7 the snow on the ground and the video and what
 8 Mr. Andryuk has testified to, this was not
 9 evidence at issue at the time of the initial
 10 hearing.
 11 JUDGE TATE: I will be accepting new evidence.
 12 MS. DICKSON: Thank you, your Honor.
 13 BY MR. SHUMATE:
 14 Q. You may answer the question.
 15 A. Could you repeat the question, please.
 16 Q. Are you aware of any plans to extend Reed
 17 Road further to the west and to the north to
 18 intersect with Route 38?
 19 A. There was a newspaper article in the first
 20 couple of weeks of December that showed some
 21 development proposals that included an
 22 intersection on the west side of Kirk Road and

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1 on it?
 2 A. Yes, sir.
 3 Q. Does it show the approximate location of
 4 Reed Road?
 5 A. Yes, sir.
 6 Q. And could you indicate where that's at.
 7 Is it above 6 and 7 on that map?
 8 A. Yes. It is the horizontal street or
 9 roadway that is above numeric codes 3, 4, 5, 6,
 10 and 7.
 11 Q. And does that road eventually intersect
 12 with Route 38 to the north?
 13 A. Yes, it does.
 14 Q. And that would be west of Kirk Road?
 15 A. Yes, sir.
 16 Q. And west of Old Kirk Road?
 17 A. Yes, sir.
 18 Q. In addition, looking at this article, is
 19 there another entrance onto Route 38 that's
 20 depicted?
 21 A. Yes, sir.
 22 Q. And where is that?

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1 Route 38 that met or married up with Reed Road.
 2 Q. When you referred to a newspaper article,
 3 I show you this newspaper article, is this the
 4 one you're referring to (tendering)?
 5 A. Yes, it is.
 6 Q. This is marked as Petitioner's Exhibit
 7 No. 4. What newspaper did that appear in?
 8 A. That's the Daily Herald.
 9 Q. And on what day?
 10 A. Friday, December the 12th, 2003.
 11 Q. And on what part of the newspaper did that
 12 appear?
 13 A. That was the lead article on the front
 14 page.
 15 Q. And what was the title of that article?
 16 A. Geneva Condos Proposed.
 17 Q. And does it have a map on it?
 18 A. Yes, it does.
 19 Q. Does it have a map that is north of the
 20 railroad tracks?
 21 A. Yes, it does.
 22 Q. Does it show Kirk Road and Old Kirk Road

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1 A. There are several additional intersections
 2 on this drawing.
 3 Q. Does one of them lead off of Old Kirk Road
 4 to the east?
 5 A. Yes.
 6 Q. During your general inspection of Old Kirk
 7 Road, which is evidenced on your videotape and
 8 the surrounding area, was anything brought to
 9 your attention which would change your position
 10 regarding the closure of Old Kirk Road?
 11 A. No, sir.
 12 Q. Was there anything discovered that would
 13 support your position that Old Kirk Road should
 14 be closed -- the crossing, excuse me?
 15 A. Yes, sir.
 16 Q. What was that?
 17 A. I believe the development that is being
 18 proposed in that area, which includes some
 19 residences, condominiums as well as businesses.
 20 I believe the traffic pattern over that crossing
 21 would be increased in the years to come and the
 22 risk and safety of the general public would be

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1 increased.
 2 Q. Mr. Andryuk, can a motorist currently make
 3 a left-hand turn at the intersection of Old Kirk
 4 Road and Route 38 as the roads are currently
 5 configured?
 6 A. Yes.
 7 Q. To your knowledge, have there been any
 8 proposals to consider establishment of a traffic
 9 light at the intersection of Old Kirk Road and
 10 Roosevelt Road?
 11 A. Yes.
 12 Q. And what is the basis of that?
 13 A. Based on this newspaper article from
 14 December the 12th in the Daily Herald, there is a
 15 reference to the city planner, Mr. Tom
 16 Swierczewski and initially I contacted him to
 17 verify some of the plan itself that was presented
 18 in that article as to its accuracy, and during
 19 that conversation initially he indicated that --
 20 MS. DICKSON: Objection to any statement that
 21 the city planner may have made on the basis of
 22 hearsay.

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1 the Kirk Road overpass to generally serve the
 2 commercial and residential interests in and
 3 around Old Kirk Road?
 4 A. Yes, sir.
 5 Q. This area that is depicted on the
 6 newspaper article, is that commonly -- do you
 7 know what that's commonly referred to as?
 8 A. I believe it's Geneva's East Gateway.
 9 Q. Now, Mr. Andryuk, this is the first time
 10 that you've testified in this particular matter;
 11 is that correct?
 12 A. Yes, sir.
 13 Q. And are you familiar with a gentleman by
 14 the name of Gerald Linneman?
 15 A. Yes, sir.
 16 Q. And did you take his position when he
 17 retired?
 18 A. Yes, I did.
 19 MR. SHUMATE: Your Honor, I have no further
 20 questions.
 21 JUDGE TATE: Miss Dickson?
 22 MS. DICKSON: Thank you, your Honor.

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1 JUDGE TATE: Sustained.
 2 BY MR. SHUMATE:
 3 Q. Independently of your conversation, is
 4 there any other information that you have or any
 5 documentation that you've seen that has shown a
 6 proposal for a traffic signal at Old Kirk Road
 7 and the intersection of Route 38?
 8 A. Yes. I've seen the most current proposal
 9 before the City of Geneva in the development of
 10 that area and it does include a traffic signal at
 11 Old Kirk Road and Route 38.
 12 Q. In your opinion as a public works engineer
 13 for the Union Pacific Railroad Company, if the
 14 area north of the Union Pacific's tracks is
 15 developed as has been proposed in the newspaper
 16 with both commercial and industrial uses, would
 17 it be your recommendation to maintain Old Kirk
 18 Road or to close Old Kirk Road?
 19 A. I would recommend that it be closed.
 20 Q. In your opinion as a member of the
 21 engineering department of the Union Pacific
 22 Railroad, could access roads be constructed under

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1 CROSS-EXAMINATION
 2 BY
 3 MS. DICKSON:
 4 Q. Mr. Andryuk, you've testified that you
 5 believe -- I believe you testified that you
 6 believe that there is the potential for building
 7 an access road that would connect Kirk Road to
 8 New Kirk Road by means of an extension or
 9 development of Reed Road; did I understand that
 10 correctly?
 11 A. Restate that, please.
 12 Q. Do you believe that it is possible to
 13 connect Old Kirk Road to New Kirk Road through
 14 the development of Reed Road?
 15 A. No. Not connect it to Kirk Road, no.
 16 That roadway would pass under Kirk Road.
 17 Q. And where would that access road connect
 18 to?
 19 A. This -- the plans that we viewed from the
 20 City of Geneva show a roadway being, basically,
 21 an extension of Woodfield Road, which is on the
 22 western side of Kirk Road and be -- being

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1 extended southward on the south side of Roosevelt
2 Road and connecting with Reed Road.

3 Q. Having been in this area recently to
4 provide the videotape this morning, from your
5 visual knowledge of the site, is the construction
6 of that access road possible today?

7 A. It's barren land right now.

8 Q. It is -- that access road is not blocked
9 at all by the presence of the welding company you
10 testified to?

11 A. The extension of Woodfield Road, is that
12 what you're referring to?

13 Q. Correct.

14 A. Is it blocked by -- Reed Road dead-ends at
15 that welding company. If a curb were put in, it
16 could intersect with a roadway being built south
17 of Route 38.

18 Q. So, it would be fair to say --

19 A. It would -- you know, it would --

20 Q. The road could not go through in a if --
21 in a straight line because of the presence of a
22 building there?

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1 road to go through, you would either have to tear
2 down the building to have the road go through or
3 the road would have to make a loop around the
4 existing property; would that be true?

5 A. Yes. Not knowing exactly where that
6 roadway is, you know, designed to come in at, I
7 don't know exactly where Woodfield Road is in
8 relationship to the end of Reed Road as it ends
9 at the welding supply company.

10 Q. Other than reading this newspaper article
11 about a proposal, do you know any of the statuses
12 of this proposed development?

13 A. Yes.

14 Q. Is Reed Road the access road you testified
15 to planned to be constructed at any time that you
16 know of?

17 A. Not that I'm aware of.

18 Q. So other than this proposal which would
19 show Reed Road going through, you're not aware of
20 any plan to have Reed Road actually connect up
21 with Woodfield?

22 A. No, ma'am.

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1 A. It dead-ends right now at a storage
2 facility or a garage type of facility, that's
3 part of the welding supply company.

4 Q. So could the road on this proposed plan go
5 through as it's proposed without --

6 A. Well, they're proposal obviously doesn't
7 go through the facility. It would have to, you
8 know, be --

9 JUDGE TATE: Go around it?

10 THE WITNESS: -- surveyed and designed to, you
11 know, miss it.

12 BY MS. DICKSON:

13 Q. Does this plan show that proposed road
14 going through that facility or around the
15 facility?

16 A. I don't -- this facility is not on this
17 drawing, so...

18 Q. So, it's unable to be -- you can't tell --

19 A. You can't determine it from this drawing.

20 Q. Okay. But from your visual view of this
21 site, you know that Reed Road dead-ends at the
22 welding company and that for any portion of that

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1 Q. So, if that is the case, currently, there
2 is no access road that you know of that would be
3 able to serve these -- the businesses if the
4 railroad crossing were closed and they didn't
5 want to ingress or egress onto Roosevelt Road?

6 A. Could you say that again, please.

7 Q. Without Reed Road going through currently,
8 if the crossing is closed, isn't the only
9 ingress/egress for the businesses to the north of
10 the crossing Roosevelt Road?

11 A. Yes.

12 Q. And if Reed Road is never constructed as
13 it's discussed in this newspaper article,
14 wouldn't Roosevelt Road, then -- the Old Kirk
15 Road and Roosevelt Road crossing be the only
16 accessway?

17 A. I'm not so sure about that because based
18 on this proposal here and from the City's plans
19 that we saw yesterday, these intermediate
20 roadways north of Reed Road actually connect with
21 Kirk Road and would provide some east/west access
22 through and across for to -- any commercial

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1 development that could occur there.
 2 Q. Okay. Looking at what you're pointing to,
 3 what road is it that you're speaking of?
 4 A. I'm speaking of the roadway -- the
 5 east/west roadway that runs just below D and D-1
 6 and the roadway that runs east/west below D and E
 7 and connects in between Kirk Road and Old Kirk
 8 Road.
 9 Q. Is this road that is shown on the plan
 10 just to the south of D and E currently
 11 constructed?
 12 A. No, ma'am.
 13 Q. And is the road that you had discussed, I
 14 think you said between B and C, is that currently
 15 constructed?
 16 A. No, ma'am.
 17 Q. And even what you haven't testified to,
 18 but the road between F and F is that road
 19 constructed?
 20 A. No, it is not.
 21 Q. So at present isn't it fair to say that
 22 this is just a development proposal?

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1 Geneva has brought them with him today and you
 2 will have access to them.
 3 MS. DICKSON: Judge Tate, may we ask for the
 4 tender of these plans for the purposes of
 5 Mr. Andryuk's testimony?
 6 JUDGE TATE: Is your witness going to present
 7 those plans, Mr. Shumate?
 8 MR. SHUMATE: No. The City of Geneva is going
 9 to present them as facts in this case when he's
 10 called as a witness.
 11 JUDGE TATE: And he's your witness?
 12 MR. SHUMATE: I will take him as my witness,
 13 but...
 14 JUDGE TATE: Or did you want to call him as
 15 your witness?
 16 MR. SHUMATE: You may, if you want.
 17 MS. DICKSON: No, I don't have any intention
 18 to call him as a witness, but in that Mr. Andryuk
 19 was allowed to testify to plans that aren't
 20 available to be -- to cross-examine him, I would
 21 ask if the City of Geneva has the plans, that
 22 they be marked, at least, for identification so I

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1 A. This is a conceptual proposal.
 2 Q. Which has not been approved by the City of
 3 Geneva?
 4 A. I don't think it's been presented to the
 5 board yet.
 6 Q. Do you know if there's been any land
 7 acquisition begun in preparation of construction
 8 of any of these proposed roads?
 9 A. I don't know that.
 10 Q. So this proposal is just that, it may
 11 never become reality; isn't that true?
 12 A. It's a proposal.
 13 Q. You testified that you saw plans provided
 14 by the City of Geneva relative to the
 15 installation of a traffic signal at Old Kirk Road
 16 and Route 38, do you have those plans with you
 17 today?
 18 A. I do not.
 19 Q. Do you -- is there any way that you can
 20 designate those plans in any fashion to allow any
 21 other person to look at what you saw?
 22 A. I believe the gentleman from the City of

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1 can discuss those plans with Mr. Andryuk.
 2 MR. SHUMATE: I have no objection to that.
 3 JUDGE TATE: Do we have the plans?
 4 MR. DICK UNTCH: What we have here, your
 5 Honor -- this is Dick Untch, director of
 6 community development for the City of Geneva, 22
 7 South First Street, Geneva, Illinois 60134. What
 8 we have is a document that's been presented by
 9 the developer in this case. It consists of an
 10 access and traffic analysis for the proposed
 11 development. I wasn't a part of the conversation
 12 that Mr. Swierczewski of my staff had with Mr.
 13 Andryuk, but I believe that Mr. Swierczewski
 14 spoke specifically about the proposal for control
 15 of traffic associated with the proposed
 16 development. And there are two options
 17 concerning --
 18 MS. DICKSON: I'm just going to interrupt you
 19 for one moment, Mr. Untch.
 20 Rather than having Mr. Untch testify, I
 21 would like to have Mr. Andryuk state specifically
 22 what it was that he looked at and we will focus

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1 on his testimony relative to that plan.
 2 BY MR. DICKSON:
 3 Q. Can you state specifically what it was
 4 that you looked at?
 5 MR. SHUMATE: One of the documents that he
 6 has --
 7 THE WITNESS: I believe it was -- and I hope
 8 you brought it.
 9 MR. SHUMATE: If we could go off the record --
 10 THE WITNESS: The engineering --
 11 MR. SHUMATE: -- your Honor, for a moment and
 12 if Mr. --
 13 THE WITNESS: -- it was the --
 14 JUDGE TATE: Just a minute. There are three
 15 people here talking.
 16 Now why do you wish to go off the
 17 record?
 18 MR. SHUMATE: Your Honor, I'd like to have
 19 Mr. Andryuk take a look at the design prints that
 20 have been submitted by the developer and that are
 21 a part of the records brought here today by the
 22 City of Geneva so he can see if those are the

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1 concerning the planned installation of a traffic
 2 light at Old Kirk Road and Roosevelt Road.
 3 A. This is the architectural -- these are the
 4 plans that I reviewed yesterday, your Honor.
 5 They are stamped, Preliminary not for
 6 construction conceptual site plan for the East
 7 Gateway, City of Geneva by their engineering
 8 firm.
 9 MS. DICKSON: Can we have these marked as an
 10 exhibit, your Honor?
 11 JUDGE TATE: Yes, we can.
 12 MS. DICKSON: John, I don't know if we need
 13 them all --
 14 JUDGE TATE: We only need one.
 15 MS. DICKSON: -- the conceptual site plan.
 16 (Whereupon, City's
 17 Exhibit No. 1 was
 18 marked for identification
 19 as of this date.)
 20 BY MS. DICKSON:
 21 Q. In looking at this document, Mr. Andryuk,
 22 it is stamped, Preliminary, not for construction.

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1 documents that he looked at so he can then show
 2 them to the Township's attorney as the documents
 3 that he reviewed with regard to the traffic
 4 control and proposed roads in the area.
 5 JUDGE TATE: I don't think the witness
 6 remembers what documents he saw and giving him a
 7 stack of documents and asking him to pick out the
 8 best one is not my idea of his recall of the
 9 plans that he examined.
 10 MR. SHUMATE: Your Honor, he examined these
 11 plans yesterday and this is when he saw these
 12 plans for the first time and that's why he
 13 testified to it. There's -- you can ask him if
 14 you would, your Honor, if those are the documents
 15 he reviewed.
 16 JUDGE TATE: Sir, did you review this stack of
 17 documents as far as you can recall?
 18 THE WITNESS: I'd have to look at them, your
 19 Honor. This one I saw yesterday (indicating).
 20 BY MS. DICKSON:
 21 Q. If we might, Mr. Andryuk, I'm interested
 22 only, actually, in the one that you testified to

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1 Do you know what that means as an engineer?
 2 A. It is not the final design.
 3 Q. So what would it be, a proposal?
 4 A. It's a concept that needs to -- all the
 5 various particulars that go into such a proposal,
 6 basic -- and the various entities that need to
 7 sign off on its design need to do so before it
 8 would become a final design, so it's subject to
 9 change at this time.
 10 Q. Okay. So where it's stated, Proposed
 11 signal, whose proposal for signalization is this
 12 that at old Kirk Road?
 13 A. This is a City of Geneva document.
 14 Q. Is it the City of Geneva's conceptual
 15 plan?
 16 A. Yes.
 17 MR. SHUMATE: Would you answer louder, please.
 18 THE WITNESS: Yes, it is. That's my
 19 understanding.
 20 BY MS. DICKSON:
 21 Q. For there to be signalization at Old Kirk
 22 Road and Route 38, whose approval would be

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1 necessary for that?
 2 A. Illinois Department of Transportation and,
 3 perhaps, Kane County.
 4 Q. In looking at this conceptual plan and
 5 comparing it to your recollection of the area, is
 6 what is shown on this conceptual plan the current
 7 configuration of Old Kirk Road as it
 8 approaches --
 9 A. No, I don't know.
 10 Q. -- Route 38?
 11 A. No.
 12 Q. What's different about the current
 13 configuration of Old Kirk at its intersection of
 14 Route 38?
 15 A. There is a change of the alignment.
 16 Shifting the road to the east making the
 17 intersection with Roosevelt Road further to the
 18 east.
 19 Q. Further to the east of the intersection of
 20 New Kirk and Roosevelt?
 21 A. Yes.
 22 Q. And, again, this is a proposal and not

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1 a traffic signal, I believe they deemed it wisest
 2 to move it further east.
 3 Q. So to be more specific about what you
 4 said, it's your understanding if Old Kirk Road
 5 retains its current alignment, it does not meet
 6 the criteria for signalization at Roosevelt Road?
 7 A. I don't know what that criteria is, so I
 8 can't answer that.
 9 Q. I'm just asking your understanding. I
 10 believe you testified to that.
 11 A. Apparently so, if they thought it
 12 necessary or a better -- a better chance to meet
 13 the criteria that they -- that that alignment was
 14 designed in order to get a traffic signal
 15 installed at Kirk Road.
 16 Q. In your conversations or from any research
 17 that you have done, do you have any idea as to
 18 when, if ever, this proposed reconfiguration may
 19 be constructed?
 20 A. You'd have to ask the City what their time
 21 frame is on that.
 22 Q. You don't have any knowledge as to time

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1 actual fact as we sit here today?
 2 A. That is correct.
 3 Q. Do you know if any land acquisition has
 4 begun to change the alignment of Old Kirk Road as
 5 it intersects with Roosevelt Road?
 6 A. I'm not aware of that.
 7 Q. In your opinion -- or do you have an
 8 opinion as to whether any land acquisition would
 9 be necessary for this alignment to change?
 10 A. I don't know, ma'am.
 11 Q. And if the alignment of Old Kirk Road and
 12 Roosevelt Road was not changed, are you aware of
 13 any plan to install signalization at Old Kirk and
 14 Route 38?
 15 A. Well, I believe -- no, initially, based on
 16 my discussion with Mr. Swierczewski who works for
 17 Mr. Untch, there was a signal proposed at the Old
 18 Kirk Road intersection as it -- as the alignment
 19 now stands. But based on opposition or the
 20 difficulty to get it past the criteria for the
 21 Illinois Department of Transportation and in
 22 order for them to allow the intersection to have

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1 frame?
 2 A. No, I don't.
 3 Q. And as Old Kirk Road is currently meeting
 4 with Roosevelt Road, it is not currently
 5 signalized; is that correct?
 6 A. Old Kirk Road?
 7 Q. Yes.
 8 A. No, it is not.
 9 Q. You testified that in your opinion the
 10 crossing should be closed if additional
 11 development occurred. I believe you stated it
 12 was because of an increase in traffic which may
 13 be engendered by this development, would that be
 14 a correct statement of what you testified to?
 15 A. Yes.
 16 Q. If this development does not occur, would
 17 it still be your opinion that this crossing
 18 should be closed?
 19 A. Yes.
 20 Q. And are you aware that there has never
 21 been any accident history at the Old Kirk Road
 22 and the railway crossing?

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